

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER J. VIDETTO,	§
	§
Defendant Below-	§ No. 493, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0104008670
Plaintiff Below-	§
Appellee.	§

Submitted: November 29, 2005

Decided: January 24, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

ORDER

This 24th day of January 2006, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Christopher Videtto, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Videtto's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that in December 2002, on the second day of his jury trial, Videtto pled guilty as an habitual offender to one count each of

second degree burglary, second degree conspiracy, and theft of a firearm. The Superior Court immediately sentenced him to twenty years at Level V incarceration to be suspended after serving fifteen years for decreasing levels of supervision. Videtto appealed and also filed a petition for a writ of habeas corpus. This Court affirmed Videtto's convictions and sentence as well as the Superior Court's denial of habeas corpus relief.¹ Thereafter, Videtto filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61, which the Superior Court denied. This appeal followed.

(3) Videtto raises five issues in his opening brief on appeal.² First, he argues that he was denied the effective assistance of counsel because his attorney failed to assure that Videtto knowingly and voluntarily entered his guilty plea. Second, Videtto claims he was denied the effective assistance of counsel because his attorney failed to counsel him about "the essential nature of the habitual offenders hearing." Third, Videtto claims he was prejudiced in his direct appeal because he was not advised of the briefing schedule and was unable to review the entire record. Fourth, Videtto asserts that the sentencing court committed plain error by not advising him of his

¹ *Videtto v. State*, 2003 WL 21692214 (Del. July 18, 2003).

² Videtto raised twelve issues in the postconviction motion he filed in the Superior Court. To the extent Videtto failed to raise all of these issues in his opening brief on appeal, those claims not raised in the opening brief have been waived. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

rights during the habitual offender hearing. Finally, Videtto contends that the Superior Court erred in denying his motion for postconviction relief without holding a hearing.

(4) We review the Superior Court's denial of a postconviction motion under Rule 61 for abuse of discretion.³ In order to establish a claim of ineffective assistance of counsel, a defendant must establish that: (i) counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's ineffectiveness, there is a reasonable probability that he would not have pled guilty but would have insisted on going to trial.⁴

(5) With respect to the first two issues on appeal, which challenge the effectiveness of Videtto's trial counsel during the guilty plea and habitual offender hearings, this Court held on direct appeal that Videtto had entered his guilty plea knowingly and voluntarily and that Videtto was eligible for habitual offender sentencing under Delaware law.⁵ Given these findings, we find no merit to Videtto's contention that his trial counsel was constitutionally ineffective because Videtto cannot establish any prejudice.

(6) Videtto's third claim is that his direct appeal was defective because he was denied access to certain documents and court rules he

³*Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

⁴*Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992).

⁵*Videtto v. State*, 2003 WL 21692241 (Del. July 18, 2003).

needed in order to pursue his claims on appeal. We find no merit to this contention. The record in Videtto's direct appeal reflects that Videtto knowingly and voluntarily waived his right to counsel on appeal and asserted his right to represent himself. Videtto was informed of the hazards of self-representation and acknowledged his responsibility for complying with all of the court's rules. To the extent Videtto found it difficult to comply with the court's rules or to get timely access to materials, those were some of the risks he accepted in waiving his right to appellate counsel.

(7) Videtto next alleges that the Superior Court erred by not advising him of his right against self-incrimination before asking him questions about his prior record at the habitual offender hearing. Videtto did not raise this issue in the proceedings leading to the judgment of conviction. Accordingly, this claim is now procedurally barred unless Videtto can establish cause for the procedural default and prejudice.⁶ In this case, Videtto stipulated that he had three prior burglary convictions in New Jersey. Under the circumstances, he cannot establish any prejudice from the Superior Court's questioning of him during the habitual offender hearing.⁷ Accordingly, we find no merit to this contention.

⁶ DEL. SUPER. CT. CRIM. R. 61(i)(3).

⁷ See *Blackwell v. State*, 736 A.2d 971, 973 (Del. 1999).

(8) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated September 20, 2005, which adopted the findings and recommendation of the Superior Court Commissioner dated November 29, 2004. The Superior Court did not err in concluding that Videtto's claims were procedurally and substantively without merit. Accordingly, we find no abuse of discretion in the Superior Court's summary disposition of Videtto's petition without holding a hearing.⁸

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁸ See *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).